

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
JANUARY 9, 2007
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LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE (arrived at 7:20 P.M.)
MEMBERS: EDWARD GALLAGHER
NUNZIO PROVENZANO
VICTORIA SELVA
DAWN SLOSSON

ABSENT: NONE

ALSO PRESENT: COLLEEN O'CONNOR, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Member GALLAGHER stated that Chairman FLORENCE had not yet arrived but the meeting should be called to order.

MOTION by SELVA seconded by PROVENZANO to appoint Member GALLAGHER as Temporary Chairman.

MOTION carried.

Call Meeting to Order.

Chairman GALLAGHER called the meeting to order at 7:05 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. Chairman FLORENCE arrived at 7:20 p.m.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

MOTION by PROVENZANO seconded by SELVA to approve the agenda as presented.

MOTION carried.

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4. Approval of the previous meeting minutes:

MOTION by SELVA seconded by SLOSSON to approve the meeting minutes of November 14, 2006 as presented.

MOTION carried.

PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:
Agenda Number/Petitioner/ Permanent Parcel No. Zoning Ordinance Section No.

- | | | |
|-----|--|--------------------------|
| (5) | Dawn and Craig Pomaville
Permanent Parcel No. 08-21-352-007 | Section 10.0704(3)(D) |
| (6) | Phillips Sign and Lighting, Inc.
Permanent Parcel No. 08-36-376-003 | Section 10.1805(I)3a |
| (7) | The Original Sign Studio
Permanent Parcel No. 08-08-201-003 | Section 10.0704(D)(1) |
| (8) | Gregory Borchich
Permanent Parcel No. 08-06-326-028 | Section 10.0311(E)(f)(4) |
5. CLARIFICATION OF ZBA ACTION TAKEN IN GRANTING A VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section 10.07043D-Request to develop parcel which exceeds 3 to 1 depth to width ratio.
Located on North side of 22 Mile Road, 300' west of Marseilles Road; Section 21;
Dawn and Craig Pomaville, Petitioner. Permanent Parcel No. 08-21-352-007

Jerome R. Schmeiser, Planning Consultant, gave an overview of the property and then proceeded to read the findings and recommendations of January 4, 2007 as follows:

On September 14, 2004, the Board of Appeals considered and granted the above captioned variance for the development for the Pomaville property. One of the conditions of the approval was that the east portion of Grisham Street be improved to provide for a buffer between the existing residences fronting on Marseilles and the traffic using Grisham.

The Board's action was granted and conditioned upon the Township Engineer approving the plan for improvements including paving, all utilities, sidewalks on both the new street and 22 Mile frontage, and the method of turnaround; the detail of how the trees will be moved to the 20' landscape area; produce an approval of the dedication or improvements to the turnaround to the satisfaction of the Macomb County Road Commission; the provision of

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the 60' street easement extended to the east property line, and the variance be recorded with the Register of Deeds Office.

It has been the opinion of the Community Planning Consultants that the Board's action to require the landscape area to be developed in accordance with the Township standards with the maintenance being the responsibility of the 2 abutting property owners on the north and south sides of Grisham.

A communication received from the Macomb Township engineer indicates their understanding that the landscape area referred to in the Board of Appeals action was to be accomplished in accordance with the standards of the Township including improving the landscape area with trees, sods and irrigation.

RECOMMENDATION:

It is recommended that the Board reinforce their earlier intention to develop the landscape area in accordance with Township standards including sod, trees and irrigation.

Member GALLAGHER stated the variance was for relief from the 3 to 1 ratio.

Jerome R. Schmieser, Planning Consultant, stated that was the original request and it was approved with the understanding that the greenbelt would be constructed to protect the abutting property owners. The petitioner has installed the greenbelt but has not installed the irrigation which is one of the standards of the Township in the development of a greenbelt.

Craig Pomaville, petitioner, was in attendance, and reviewed the September 14, 2004 variance that had been granted to him along with the conditions of having to create a greenbelt, how the trees would be moved, along with placing bonds to ensure the placement of placement of the trees as reviewed and approved by the Township Engineer. He then highlighted the process he had gone through in trying to receive the bonds that had been posted to require the installation/construction of the greenbelt. Lastly, he asked that the requirement of having to install an irrigation system and sod as being required by the Planning Consultants to obtain the release of his bonds be waived.

Chairman GALLAGHER stated he acted upon the 3 to 1 ratio as requested and anything pertaining to the development of the greenbelt would follow the standards of the Township which is there must be irrigation in the greenbelt.

John Wright, representative of JJ Associates, stated the greenbelt is in the R-O-W and that this was done as a good neighborly gesture. He then asked if there standards within the Township for having greenbelts built on stub streets.

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Jerome R. Schmeiser, Planning Consultant, stated the petitioner was granted a variance with a condition that he would protect the neighbors with the development of a greenbelt and according to the Township standards it must be sodded and irrigated.

Chairman FLORENCE arrived at 7:20 P.M.

Member SELVA stated she had made the original motion and it was conditioned upon the improvements having to be reviewed and approved by the Township Engineers and that their standards require the installation of the sod and an irrigation system.

Jerome R. Schmeiser, Planning Consultant, stated the Township owns no roads, they are all rights of way and within all of the rights of way there are greenbelts there are irrigation systems from the property owner.

Craig Pomaville asked that after the system were to be installed who would be responsible for the utility bills.

John Wright stated the parcels that were being affected by this were done through a parcel split, this is not a subdivision.

Lengthy discussion pursued with regards to the maintenance of the greenbelt, ownership, and having the future lot owner being responsible for the irrigation and sod.

Colleen O'Connor, Township Attorney, stated there was a conditional variance granted to you, and if they want to place these conditions on your variance they may do so.

Jerome R. Schmeiser, Planning Consultant, suggested that the petitioner agree to record that each of the parcels will have lawn sprinkler installed and that sprinkler heads will be located so that one from each parcel will provide irrigation for the greenbelt area. Mr. Schmeiser said that he would review the entire matter with Engineering to insure that the suggestions will meet the Townships standards.

Public Portion: None.

MOTION by SELVA seconded by GALLAGHER to close the public portion.

MOTION carried.

MOTION by SELVA seconded by GALLAGHER to clarify the variance that had been granted on September 14, 2004 and that the intent was to have the Township Ordinances pertaining to greenbelts be followed. The variance was conditioned based upon the petitioner agreeing to record that each of the parcels will have lawn sprinklers installed and that sprinkler heads will be located so that one from each parcel will provide irrigation for one half of the greenbelt area.

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MOTION carried.

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section 10.1805(I)3a-Request to increase the height of a ground sign from 5' to 15'.
Located on North side of Hall Road, immediately west of GTWRR; Section 36; Phillips Sign and Lighting Inc., Petitioner. Permanent Parcel No. 08-36-376-003

Chairman FLORENCE read the findings and recommendations of January 4, 2007. They are as follows:

This matter was considered by the Board on November 14, 2006 but tabled for a report on the Milne Ford sign. The sign for Milne Ford was approved by the Planning Commission in 1997 with a height of 25'. In 1999 the Township adopted a comprehensive amendment to the Zoning Ordinance which established a maximum height of 5 ft. for ground signs.

A current review of the sign ordinance, although not yet considered by the Planning Commission or Township Board, is suggesting a maximum height of 7' for signs in C-4 zones.

The petitioner is requesting permission to install a pylon sign of 15' in height. The pylon will carry a sign of 26' square feet (2'10" x 9'2") and be 11'1.5" above grade.

The property is zoned C-4 and contains a Volvo dealership. The zoning ordinance provides for 5' high signs for land zoned C-4.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons.

1. Compliance with the strict letter of the sign height requirement would not unreasonably prevent the ownership from using the property as zoned. Other commercial structures planned in Macomb Township will be required to comply with the same sign height requirements which are evidence that the proper sign height would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in commercial developments in Macomb Township. The other owners are or will be required to comply with the sign height requirement. As a result the other property owners do not have the opportunity to make use of sign height.

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There is nothing unusual about the parcel in question that sets it apart from other similarly zoned parcels in area or in Macomb Township. There is nothing to prevent visibility of the sign from Hall Road. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to increasing the sign height by approximately 300% from 5' to 15'.

Ed Phillips, petitioner, was in attendance, and stated the hardship was the lack of adequate signage. He stated the appeal was for height only. The square footage of the sign itself is less square footage than permitted and that the sign is sitting back at 18 feet which is 3 feet further than required. He also highlighted several other auto dealerships within Macomb Township and the varying ground sign limitations. Lastly, there are two dealerships one being Crest/Volvo and the other Victory Nissan, which are abutting properties, both of which have different zoning classifications and ground sign limitations. Crest/Volvo is zoned C-4 with a 5 foot ground sign limitation and Victory Nissan is zoned C-3 with a 15 foot ground sign limitation and indicated that he could not understanding this reasoning.

Bill Chope, owner, stated the dealership since its creation has created 22 new jobs and has also exceeded its customer satisfaction.

Jerome R. Schmeiser, Planning Consultant, stated the Planning Commission has recently approved, within a C-4 district, a ground sign at 5 foot in height which is planned for a Jaguar, Land Rover and Saab Dealership. He went on to discuss the dealership signs used in comparison by Ed Phillips are the reason for the changes within the Zoning Ordinance. Lastly, it appears that there is a light pole located at the 15 foot setback for the sign location which causes the existing sign to be located at 18 feet.

Colleen O'Connor, Township Attorney, stated that a variance can only be granted by the Board based on a practical difficulty. A practical difficulty legally means that the property can't be used as zoned if you were not granted a variance.

Bill Chope asked why a dealership was permitted a C-3 zoned when it was his presumption that a dealership could only be located on a C-4 zone.

Jerome R. Schmeiser, Planning Consultant, stated that a Consent Judgment had been entered into with the Township on this particular C-3 parcel.

Bill Chope stated dealerships should either have 7 foot or 15 foot signs. There should not be 20 foot, 15 foot or 5 foot high signs. There are only 8 dealerships along Hall Road and that there would be a situation where everyone has a different sign. We are coming before you stating we want to be a leader and be consistent and to have a sign the same height as the dealer next door.

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Chairman FLORENCE stated the development of the dealerships has occurred over time and the ordinances at that time may no longer be in effect.

Colleen O'Connor, Township Attorney, indicated to the petitioner that he was asking the Board to perform something that they don't have the authority to do. She noted if petitioner felt the Township was selectively enforcing the ordinance, or if they felt that they had a claim for equal protection because you are being denied rights that others have, that would be a lawsuit filed with the courts. That is not pitch to make before this Board.

Ed Phillips stated this Board is here to provide variances. Is that correct?

Colleen O'Connor, Township Attorney, stated this Board is here to provide variance should there be a practical difficulty.

Member PROVENZANO stated the building was visible and indicated that there was a VOLVO sign on top of the building. That is how I found it and bought a vehicle.

Public Portion: None.

MOTION by SELVA seconded by PROVENZANO to close the public portion.

MOTION carried.

MOTION by GALLAGHER seconded by SELVA to deny the variance request of Section 10.1805(I)3a-Request to increase the height of a ground sign from 5 feet to 15 feet; Located on the north side of Hall Road, immediately west of the GTWRR; Section 36; Phillips Sign and Lighting, Inc., Petitioner. Permanent Parcel No. 08-36-376-003. The variance was denied since there has been no practical difficulty displayed. The business is there and functioning. The granting of the variance would give an advantage not received by any other commercial development in the township. Lastly, the variance would amount to an increase of 300% over the existing ordinance.

MOTION carried.

7. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Permission to vary Section 10.0704D(1)-Request to vary the setback from the centerline of 25 Mile Road and the centerline of Penzien Drive from 90' to 72' and from the property line on Penzien Drive from 25' to 20'.
Located on Southwest corner of 25 Mile Road and Penzien Drive; Section 8; The Original Sign Studio, Petitioner. Permanent Parcel No. 08-08-201-003.

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Chairman FLORENCE read the findings and recommendations of January 4, 2007. They are as follows:

The petitioner is requesting permission to install a subdivision entrance sign on the above-described parcel with a setback of 20' from the property line on Penzien Drive and 12 1/2' from the property line.

The petitioner's plans have been revised in accordance with the Township Engineer and the Water and Sewer Department officials recommendation relative to the setbacks.

The proposed sign will measure 62" tall x 11' in width. The sign will contain 21 square feet.

RECOMMENDATION:

It is recommended that the variance request be approved.

Tina Brown, petitioner, was in attendance and stated the sign was being requested for the west bound traffic on 25 Mile Road not having visibility. She indicated that a "Hold Harmless Agreement" would be filed should any work need to be done within the water/sewer easement.

Jerome R. Schmeiser, Planning Consultant, asked if the signs would be placed 20 feet from Penzien Drive and 12.5 feet from 25 Mile Road.

Tina Brown indicated that was correct.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0704(D)(1)-Request to vary the setback from the centerline of 25 Mile Road and the centerline of Penzien Drive from 90 feet to 72 feet and from the property line on Penzien Drive from 25 feet to 20 feet; Located on the southwest corner of 25 Mile Road and Penzien Dive; Section 8;The Original Sign Studio, Petitioner. Permanent Parcel No. 08-08-201-003. The granting of the variance will enhance the subdivision along with the placement the sign being located outside of any Water/Sewer Easement.

MOTION carried.

8. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Permission to vary Section 10.0311E(f)4-Request to reduce the rear yard setback from 35' to 17' to construct a deck.
Located on the northeast corner of the intersection of Serne Drive and Placid Drive (north of 25 Mile Road, east of Hayes Road); Section 6; Address of Property: 55993 Serne Drive; Gregory Borchich, Petitioner. Permanent Parcel No. 08-06-326-028

Chairman FLORENCE read the findings and recommendations of January 4, 2007. They are as follows:

The petitioner is requesting allowance to project a deck from the second floor of a residence 18' into the rear yard of the property.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the rear yard setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same rear yard setback requirements, which is evidence that the proper setbacks would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the rear yard setback requirement. As a result the other property owners do not have the opportunity to make use of 50% of their rear yard for structural purposes.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the rear yard setback from being met. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the

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parcel according to the ordinance as written.

Greg Borchich, petitioner, was in attendance. He noted the findings indicated that if he were granted a variance that none of his neighbors would have the benefit of enjoying the same thing when in fact all of the neighbors have the same thing and produced pictures to that fact. He indicted that his property does back up to wetlands along with a main gas line running behind his property as well.

Jerome R. Schmeiser, Planning Consultant, stated the property is not within a wetland and that it could be built upon in accordance with the ordinance.

Discussion was held regarding the proposed deck. Mr. Borchich presented drawings indicating his need for the variance requested.

Public Portion: None.

MOTION by SELVA seconded by SLOSSON to close the public portion.

MOTION carried.

MOTION by PROVENZANO seconded by SELVA to deny the variance of Section 10.0311(E)(f)(4)-Request to reduce the rear yard setback from 35 feet to 17 feet to construct a deck; Located on the northeast corner of intersection of Serne Drive and Placid Drive (north of 25 Mile Road, east of Hayes Road); Section 6; Gregory Borchich, petitioner. Permanent Parcel No. 08-06-326-028. The variance was denied based upon the fact the strict compliance would not unreasonably prevent the owner from using the property as zoned, it would give the applicant an advantage over others especially if they did not place poured patios and lastly there is nothing unusual about the parcel in question. Member SELVA added that there were other alternatives that would allow him to build the deck although costly, but that there are legal alternatives to comply.

MOTION carried.

9. OLD BUSINESS

None.

10. NEW BUSINESS

None.

11. PLANNING CONSULTANTS COMMENTS

None.

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12. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN
CONNECTION WITH THIS AGENDA

**MOTION by GALLAGHER seconded by PROVENZANO to receive and file all
correspondence.**

MOTION carried.

ADJOURNMENT

MOTION by SLOSSON seconded by SELVA to adjourn the meeting at 9:02 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK